



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

ANTHONY WILLIAM MILLER, #56421	§	PETITIONER
	§	
VERSUS	§	CIVIL ACTION NO. 2:02cv61-DMR-RHW
	§	
DOLAN WALLER and	§	
MIKE MOORE	§	RESPONDENTS

CERTIFICATE OF APPEALABILITY

A notice of appeal having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court pursuant to 28 U.S.C. § 2254 or the detention arises out of a judgment and conviction in federal court which is being challenged pursuant to 28 U.S.C. § 2255, the court, considering the record in the case and the requirements of 28 U.S.C. § 2253 and Rule 22(b) of the Federal Rules of Appellate Procedure, hereby finds that:

Part A

- ☐ A certificate of appealability should issue. (See reasons below.)
- ☒ A certificate of appealability should not issue. (See reasons below.)

The Court hereby **DENIES** the Motion of the Petitioner for a Certificate of Appealability [Doc. No. 64].

Part B

(for non-CJA pauper cases only)

- ☒ The party appealing is a pauper.
- ☐ The party appealing is not a pauper. (See reasons below.)

The Court hereby **GRANTS** the Motions of the Petitioner to proceed *In Forma Pauperis* on Appeal [Doc. Nos. 66 and 70].

REASONS:

The Petitioner has failed to make a substantial showing of the denial of a constitutional right as set forth in 28 U.S.C. §2253(c)(2); This court is barred from reviewing Petitioner's claims which are procedurally defaulted as unexhausted, and the Petitioner has not demonstrated cause for the default or actual prejudice or a fundamental miscarriage of justice. Furthermore, the state court's decisions did not result in an unreasonable application of clearly established federal law or were denied on the merits by the state court pursuant to an independent and adequate state law.

Date: June 27, 2006

S/ DAN M. RUSSELL, JR.
UNITED STATES DISTRICT JUDGE